



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



Janis Montalbano
c/o C. Deborah Phillips, Esq.
Nickless & Phillips
495 Main Street
Fitchburg, MA 01420

PUBLIC ENFORCEMENT LETTER

Dear Ms. Montalbano:

As you know, the State Ethics Commission ("the Commission") has conducted a preliminary inquiry into allegations that you, as a member of the school committee for the Narragansett Regional School District, violated the state conflict of interest law, General Laws c. 268A, by approving payment warrants in which companies owned by your husband and son had financial interests. Based on the staff's inquiry (discussed below), the Commission voted on March 29, 2000, that there is reasonable cause to believe that you violated the state conflict of interest law, G.L. c. 268A, §§19 and 23(b)(3).

For the reasons discussed below, the Commission does not believe that further proceedings are warranted. Instead, the Commission has determined that the public interest would be better served by bringing to your attention, and to the public's attention, the facts revealed by the preliminary inquiry and by explaining the application of the law to the facts, with the expectation that this advice will ensure your understanding of and future compliance with the conflict of interest law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

I. Facts

1. During the time relevant, you were a member of the school committee for the Narragansett Regional School District ("the District").^{1/} There are eight school committee members.

2. Your son William owns a company known as MESD, Inc., a dealership that sells and services computers. Your husband Charles owns Montalbano Electric. Both entities received contracts for goods and services from schools within the District,^{2/} and both submitted invoices to the school committee for payment over the years. In fact, your husband has done work for the school department for about fifteen years.

3. Each month, after the school department received invoices from various vendors, the superintendent reviewed and approved the purchase orders, with the invoices attached, thereby authorizing the school department treasurer to process payment for that item or service. The treasurer also received verification from the teacher or principal that the items or services had been received.

4. The treasurer then prepared the warrant for the school committee to review and approve that month. Each warrant was a computer printout listing the vendors and the payments due. The school

committee members then reviewed the warrant and approved the payments therein by signing at the bottom. The school committee members did not review each individual bill presented for payment. The invoices themselves were not attached to the warrants, but they were available in the superintendent's office for review. Usually, one school committee member reviewed the invoices on behalf of the committee.

5. As a member of the school committee, you signed warrants authorizing payments to your husband's and son's companies on various occasions between May 1, 1996, and May 11, 1998.^{3/} The warrants listed all vendors in alphabetical order and the payments due for that period. The following chart describes the payments approved for your family's companies:

Warrant Date	Company	Amount			
7/15/96	Montalbano Electric	\$460.00	12/17/96	MESD	
\$827.70		1/21/97	MESD	\$508.46	
2/11/97	Montalbano Electric	\$429.00 ^{4/}	3/18/97	MESD	
\$963.35		5/12/97	MESD	\$1,062.78	" "
Montalbano Electric		\$560.00	6/17/97	MESD	
\$1,500.00		2/10/98	MESD	\$450.00	3/17/98
MESD		\$1,225.00	5/11/98	MESD	
\$506.25		" "	Montalbano Electric	\$100.00	

The total for MESD is \$7,043.54, and the total for Montalbano Electric is \$1,549.00.

6. You provided the following information: You have been very careful to avoid participating in any contract discussions or other matters concerning your son's or husband's businesses, but you could not say if you signed warrants to which your husband's and/or son's invoices may have been attached. You never looked at the warrants or the bills. It is possible that you signed warrants reflecting payment for bills from your husband's and son's companies. If you signed such warrants, then you were just approving the total amount. The school committee members never reviewed individual bills on the warrant. Certainly, you never discussed any of your husband's or son's bills that were submitted for payment.

You admitted that you knew that your husband and son were doing work for the schools, and thus could have known that they would have to be paid, but you did not realize at the time that you signed the warrants that your family members' businesses were listed therein for payment.

II. Discussion

As a member of the school committee for the Narragansett Regional School District, you are a municipal employee as that term is defined in G.L. c. 268A, §1(g). As such, you are subject to the conflict of interest law G.L. c. 268A generally and, in particular, to the following sections of that statute.

Section 19^{5/} prohibits a municipal employee from participating^{6/} in particular matters^{7/} in which she or, among others, a member of her immediate family^{8/} has a financial interest.^{9/} The concern of this section is that the objectivity and integrity of municipal employees can be compromised if they act on matters affecting the financial interests of people or businesses with whom they are closely related. You should be aware that the Massachusetts Supreme Judicial Court has determined that participation involves more than just voting, and includes any significant involvement in a discussion leading up to a vote. See *Graham v. McGrail*, 370 Mass.

133, 138 (1976). In that case the Court advised, “The wise course for one who is disqualified from all participation is to leave the room.” *Id.*

Each decision by the school committee for the Narragansett Regional School District to sign the warrant authorizing payments to vendors — including companies owned by your husband or son — was a particular matter. Your husband and/or son had financial interests in those particular matters as their companies were among the vendors on the warrant list. You participated in those particular matters as a member of the school committee by signing the warrants to signify approval of the payments. This participation was personal and substantial because the school committee’s approval was necessary to authorize the vendor payments. See *EC-COI-98-5* (school committee member would violate §19 if she approved warrants authorizing payments to a company in which she served as director); *EC-COI-87-32*. When you so participated, you knew that your husband and/or son were doing or had done work for the school department, and you knew that the school committee authorized such vendor payments by signing the warrants. Therefore, you violated §19.

In addressing your conduct publicly, the Commission wants to emphasize the following point. Section 19 requires that you have “knowledge” that the particular matter is one in which your family member has a financial interest. In this case, you knew that your husband and son were doing work for the schools and that they would eventually seek payment as vendors. You knew that sooner or later the school committee would review warrants listing the names of your husband’s and/or son’s companies as vendors, and that your signing of those warrants would authorize payment to them as vendors. Yet, you consciously chose to sign the warrants without reading them or reviewing the relevant invoices to ascertain whether your husband’s and/or son’s companies were included among the vendors listed in the warrants. Even accepting your contention that you had no actual knowledge that their companies’ invoices were among those being approved when you signed particular warrants, your conduct demonstrated *willful blindness* to the conflicts.

“If a person confronted with a state of facts closes his eyes in order that he may not see that which would be visible and therefore known to him if he looked, he is chargeable with ‘knowledge’ of what he would have seen had he looked. *Demoulas v. Demoulas*, 428 Mass. 555, 577 (1998) (quoting *West’s Case*, 313 Mass. 146, 151 (1943)). “Proof of actual knowledge is frequently shown where one is in possession of information of such weight and reliability that men commonly act upon it as true. Absolute certainty is not required.” *West’s Case*, 313 Mass. at 150. Where one has sufficient information to know a fact, then one cannot avoid the consequences of knowledge by remaining in willful ignorance. *Id.* at 150-51. See also *Van Christo Advertising, Inc. v. M/A-COM/LCS*, 426 Mass. 410, 416-17 (1998) (claim of willful ignorance will not be excused if information would have been known had person simply not consciously disregarded it).

The evidence indicates that you, in effect, “closed your eyes” to the facts that would have informed you of the conflicts. You knew that your husband and son had done work for the school department which meant that their companies’ names would end up on one or more warrants. Yet, knowing that, you chose not to read the warrants when you signed them. Under such circumstances, the Commission will apply the doctrine of willful blindness and charge you with the knowledge that you would have had if you had read the names listed in the warrants. Therefore, the Commission deems that you had knowledge of your family members’ financial interests and, consequently, there is reasonable cause to believe that you violated §19.¹⁰

_____The Commission is not unsympathetic to the fact that school committee members are called upon to review and approve a significant volume of paperwork while, at the same time, addressing various agenda items. This can result in a board member's failing to notice that a family member's name or company is listed in the vendor warrant presented for authorization. You could have avoided this problem by alerting the school committee staff who prepared the vendor warrants that any warrant which included payments to your family members' companies should not have been presented to you for signature. There appear to have been enough board members available to authorize such warrants in your absence. In making this suggestion, of course, the Commission does not mean to discount the importance of board members' personally reviewing the documents that they sign.

III. Disposition

Based upon its review of this matter, the Commission has determined that your receipt of this public enforcement letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$2,000 for each violation. The Commission chose to resolve this case with a public enforcement letter, rather than imposing a fine, because there has been no Commission precedent directly addressing willful blindness in regard to the §19 knowledge element. Therefore, the Commission perceives the need to educate more than to punish in this area.

DATE: April 11, 2000

^{1/}You were a member of the school committee for about 12 years. You left the board in May 1998.

^{2/}The principal at each school within the District acts as the contracting officer for that school and chooses the vendors.

^{3/}The Commission decided not to review warrants signed before May 1, 1996.

^{4/}The warrant is difficult to read, but the figure appears to be \$429.

^{5/} Section 19 provides in pertinent part,

(a) Except as permitted by paragraph

(b) a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment has a financial interest, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

^{6/}"Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

^{7/}"Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property.

⁸“Immediate family” means the employee and his spouse, and their parents, children, brothers and sisters.

⁹“Financial interest” means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. See *EC-COI-84-96*.

¹⁰Your conduct would also lead a reasonable person to conclude that your family members could unduly enjoy your favor in the performance of your official duties, in violation of §23(b)(3). Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, with knowledge of the relevant facts, to conclude that anyone can improperly influence or unduly enjoy his or her favor in the performance of official duties, or that he or she is likely to act or fail to act as a result of kinship, rank, position or undue influence. This subsection’s purpose is to deal with appearances of impropriety and, in particular, appearances that public officials have given people preferential treatment. This subsection goes on to provide that the appearance of impropriety can be avoided if the public employee discloses in writing to his appointing authority (or if he does not have an appointing authority, files a written disclosure with the town clerk) all of the relevant circumstances which would otherwise create the appearance of conflict. The appointing authority or town clerk (for elected employees) must maintain that written disclosure as a public record. You made no disclosures to dispel the appearance of impropriety. You should note, however, that a §23(b)(3) disclosure will not excuse a §19 violation. The two sections of the law are distinct and carry their own particular provisions for excusing violations.